

Application No. 10/687,205
Amendment dated September 6, 2005
After Final Office Action of June 8, 2005

Docket No.: 28944/38522

REMARKS

Receipt of the office action mailed June 8, 2005 is acknowledged. Claims 1-11 have been rejected as being anticipated by Rutter, or as obvious over Rutter. Claim 12 has been withdrawn. The action has been made final.

The finality of the office action is improper and should be withdrawn. The first substantive action made a Section 112 rejection concerning the construction of the dynamic seal. In response, the applicant clarified this construction. In such circumstances, finality of the next substantive action is improper. According to the MPEP, at Section 706.07(a), "a second or any subsequent action on the merits in any application . . . if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed." According to the same section, "one would reasonably expect that a rejection under 35 USC 112 for the reason of incompleteness would be replied to by an amendment supplying the omitted element." The present final action is based on prior art not previously of record, and the finality of the rejection must be withdrawn.

Next, the rejection based on Section 102(b) is improper. The cited publication has a 102(e) date of March 4, 2002. The present application has an effective priority date of November 7, 2002, which is the filing date of the French application from which the present application claims priority under Section 119. Accordingly, no proper rejection can stand under section 102(b). Moreover, applicant reserves the right to remove the reference in its entirety by swearing behind the effective date of the reference.

Nevertheless, in an attempt to advance this case to issue applicant has made the foregoing amendments. There is good and sufficient reason why the foregoing amendments are being made - including the fact that the rejection is based on art not already in the application - and therefore the amendments should be entered.

As amended, claim 1 positively recites, in part, that the dynamic seal comprises an annular encoder element of magnetizable polymer presenting at least one polarized mark, with the encoder element being secured to the sleeve and having at least one annular surface to which the lip is bonded. The lip is made of PTFE.

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By comparison, on the Rutter reference the lip 29 is made of Rubber. See paragraph 18 of Rutter. The coefficient of friction of PTFE is far lower than the coefficient of friction of the rubber lip 29 of the reference, and thus the rubber lip 29 of the reference was not be suitable. Moreover, it would be no suggestion to substitute a rubber component for the component requiring the properties of PTFE.

Further, the encoder element is constructed of a magnetizable polymer. There is no suggestion to be found in the reference to use PTFE for the lip, as one of skill in the art would recognize that "it is particularly difficult to bond or stick PTFE onto a metal element or any element presenting a surface that is smooth and hard." See the present specification, at page 6, lines 5-9.

Moreover, nothing in Rutter teaches that the encoder could be made of a magnetizable polymer. To the contrary, the reference indicates that the encoder 8 is a metal part or a metal-like part as the drawings employ crosshatching typically used to represent a sintered magnet material. There is no suggestion to make the change without using applicant's disclosure as a template. Finally, if one were to attempt to replace the rubber lip of Rutter with a PTFE lip, the lip may not be a fixable to the underlying component, resulting in a non-functional device. Accordingly, once again there is no suggestion to make the needed change.

Finally, the reference is non-analogous art. One concerned with rotary shafts lubricated by oil under pressure (as contemplated in the present application) would not look to a device having a rotary shaft supported on ball bearings and lubricated by grease (as is the case with Rutter). Accordingly, there can be no *prima facie* case of obviousness based on Rutter.

For all of the foregoing reasons, claim 1 is in allowable form, as are the claims dependent upon claim 1.

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In view of the foregoing, the above-identified application is in condition for allowance. In the event there is any remaining issue that the Examiner believes can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned attorney at (312) 474-6612.

Dated: September 6, 2005

Respectfully submitted,


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